

December 19, 2012

NATIONAL BOARD OF TRUSTEES

Timothy G. Morgan
Chair

John P. Butler
Chair-Elect

Ronald E. Frieson, MBA
Immediate Past Chair

Myra A. Kleinpeter, MD, MPH
Chair, Medical Affairs

Nora V. Lee
Treasurer

Gail S. Wick, MHSA, BSN, RN, CNN
Secretary

Jennifer E. Robinson
Member-at-Large

Robert M. Tarola, CPA
Member-at-Large

Douglas A. Asofsky
Sharon P. Burbage, RN, CNN
Steven G. Elliott, PhD
Stephen M. Gansler
Bonita Balkcom Guilford
Orlando M. Gutiérrez, MD, MMSc
Dalal J. Haldeman, MBA, PhD
Alan B. Leichtman, MD
Robert B. Lewis, III
Sharon Pahlka, CLC
Rulan S. Parekh, MD, MS
Frank D. Pelliccione
H. Jerome Russell
Rahsaan W. Thompson, Esq.
John F. Weidenbruch, Esq.
LaVarne A. Burton
President & CEO, ex-officio

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, D.C. 21244-1850

**Re: CMS-9980-P- Patient Protection and Affordable Care Act;
Standards Related to Essential Health Benefits, Actuarial Value,
and Accreditation**

Dear Acting Director Tavenner,

The American Kidney Fund (AKF) is our nation's leading charitable health organization serving people with and at risk for kidney disease through direct financial assistance, comprehensive education, and community service programs. Our advocacy efforts are centered on protecting access to quality, affordable health care, medication, and treatment for individuals with kidney disease. As such, we appreciate the opportunity to submit comments on the proposed rule entitled "Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation."

The American Kidney Fund is a member of Kidney Care Partners (KCP). KCP will also submit comments on the Proposed Rule. AKF has actively participated in the development of and strongly supports KCP's comments on the Proposed Rule.

The American Kidney Fund supports the creation of federal and state facilitated Health Insurance Exchanges. We believe these plans will provide access to health insurance for patients who have been uninsured or underinsured in the past. We are glad that the Centers for Medicaid and Medicare Services (CMS) has taken steps to develop guidelines and standards for Essential Health Benefits (EHB) in the Health Insurance Exchanges, however, we remain concerned that some critical needs of patients are not clearly addressed. The American Kidney Fund is focused on ensuring that the unique needs of end stage renal disease (ESRD) patients are not overlooked as major aspects of the Affordable Care Act are implemented. Accordingly, we have outlined a few concerns we ask CMS to specifically address in its final rulemaking in order to prevent interpretations of the health insurance exchange

regulation from adversely impacting patients with kidney disease:

CMS should specify coverage for treatment of ESRD in the definition of essential health benefits in qualified health plans.

In previous comments, AKF has advocated for coverage of ESRD as an essential health benefit. The proposed rule does not provide a specific list of benefits that must be covered by all health plans, but it provides states with the flexibility to choose a benchmark plan that reflects the scope of services offered by a “typical employer plan” in that state. We understand that some benchmark plans cover ESRD-related services, however, over time, as benchmark plans change or adopt different coverage policies, they could offer less than adequate coverage and treatment options to their enrollees based upon a diagnosis of kidney disease. Further, individuals who participate in health benefit exchange plans should have a clear indication that if they develop kidney failure, there will be no gap in coverage, or discrepancies about the benefits covered. We respect the need for state flexibility but we are concerned that treatment of ESRD should be specifically addressed.

AKF recommends that CMS specifically clarify coverage of ESRD as an essential health benefit in qualified health plans. We will continue to monitor the development of benchmark plans to ensure coverage of ESRD is included.

CMS should ensure that ESRD patients have access to adequate prescription drug benefits, provider networks and protections from discriminatory practices.

The Affordable Care Act seeks to protect individuals with pre-existing conditions from discriminatory practices. In CMS’2011 Essential Health Benefits Bulletin, it was recommended that qualified health plans (QHPs) provide coverage for at least one drug per therapeutic class. The proposed rule suggests expanding required prescription drug coverage for QHPs to the greater of at least one drug per each therapeutic class or the same number of prescription drugs in each therapeutic class as the EHB-benchmark plan in the state. AKF has previously commented to CMS that ESRD patients suffer from multiple co-morbidities such as hypertension and diabetes, and require numerous medications. We are concerned that the CMS-proposed “greater of” expansion could result in the EHB-benchmark plans covering fewer medications than those required by the typical ESRD patient. AKF believes that inadequate coverage of drugs could undermine patient access to necessary drug therapies, which may be the most effective and efficient means of treating a patient with chronic conditions.

Given the required frequency of dialysis, it also is important that patients have an adequate choice of providers who are in close proximity to where the patient lives. The proposed rule does not address access to dialysis providers. As the leading charitable provider of financial assistance to help patients with transportation costs to reach dialysis care, we have seen the hardship currently faced by some patients in rural areas who must travel great distances to reach treatment. Having a dialysis treatment center nearby is of paramount importance to dialysis patients. It is our hope that Exchanges will allow patients to choose from a selection of health care providers and dialysis facilities that are within a reasonable geographic distance.

Lastly, CMS should ensure that qualified plans accept premium payments made by third parties and not deny or limit coverage for patients for such services if premiums, copayments, or other payments are made by third parties on their behalf. The American Kidney Fund provides financial assistance to 1 in 4 dialysis patients to help them pay for health insurance. It is important that these services continue to be available to patients who select plans within the health exchanges, and may need assistance with premium payments.

In conclusion, the American Kidney Fund is committed to ensuring that patients with kidney failure have equal access to coverage options under the new Affordable Care Act. We want to ensure that Exchange plans do not discriminate against patients with chronic health conditions. If this were to happen, many ESRD patients would have less comprehensive coverage than they had prior to the Affordable Care Act.

Thank you for your time and attention to this issue. We look forward to working with you to ensure that our patients who are receiving dialysis are protected as you continue to develop the regulatory framework of the Health Insurance Exchanges.

Sincerely,



LaVarne A. Burton
President and CEO